IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1792 OF 1993

1. Chandrakant Jagannath Varadkar
residing at Deonar Municipal Colony,
E.10,R.No.7,Sambaji Ngr,Deonar,Bom-43.
2. Narayan Pundalik Sawant
residing at Deonar Municipal Colony,
E-10,R.No.9,Sambaji Nagar, Bom-43.
3. Anant Chikaya Devadiga
residing at Vikram Tiwari chawl,
B-45, R.No.5,P.M.Rd.,Khetwadi
Santacruz,(W),Bombay-54. ....Petitioners.

VERSUS

1. Municipal Corporation of Gr.
Bombay.
2. The Commissioner, Municipal
Corporation of Gr.Bombay,
Mahapalika Marg,Bombay-1.
3. Chief Accountant,Municipal
Corporation of Gr.Bombay,
Mahapalika Marg,Bombay-1.
4. Dy. Chief Accountant, Municipal
Corporation of Gr.Bombay,
Mahapalika Marg,Bombay-1. .....Respondnets.

Advocate Shri A.B.Vagyani with Shri S.R. Barulkar for Petitioner Nos. 1 to 3.
Shri Vinod Mahadik for respondent.

CORAM: R.M.S.KHANDEPARKAR &
V.M.KANADE,JJ.
DATE : 5th September 2005.

ORAL JUDGEMENT (PER V.M.KANADE,J):

1. The Petitioner's are seeking writ of mandamous or any other appropriate writ, order directing respondents to fix the pay scale of the petitioner in the grade of Rs.130-8-170-10-18-EB-190-200 as per the pay fixation under rule 32(d) of the Municipal Service Rules from 2.4.1979 and direct the respondents to pay the difference in the pay scale from 2.4.1979 till the decision of this

Petition with interest thereon at the rate of 12% per annum. The petitioners are also further seeking appropriate direction, directing the respondents to fix the pay scale of the petitioners in the post of Leading Fireman in the pay scale same as above and also pay increments and other consequential benefits raising out of the revised pay scale.

2. The Petitioners have also challenged validity of the Circular dated 17.7.1979 on the ground that it is illegal and ultra vires apart from being violative of Article 14 of the Constitution of India.

3. Brief facts which are relevant for the purpose of deciding the present Writ Petition are as under;

The Petitioner are employees of the Municipal Corporation and are working as Leading Fireman Fitters in the Fire Brigade Department of respondent No.1 herein. Petitioner Nos. 1 and 2 were appointed as Fireman Fitters on 1.6.1962 and petitioner no.3 was appointed as Auto Electrician on 29.8.1977. Thereafter in due course of time petitioners were promoted as Leading Fireman . Petitioner nos. 1 and 2 were promoted in the year 1969. Petitioner no.3 was promoted as Assistant Foreman on

1.5.1993.

4. The grievance of the petitioner is that the persons who are junior to them and who are appointed subsequently, are being given higher pay scale. According to the petitioners one Krishna Mahadeo Nivandkar was appointed as Fireman Auto Fitter on 28.1.1974 whereas, one Shashikant Namdeo Mahajan was appointed as Fireman Auto Fitter on 1.2.1974. Though both of them were promoted in the year 1979 to the post of Leading Fireman in the same grade as that of the Petitioners, both these persons were given additional benefit of Rs.200/-. Grievance of the petitioner is that , though these two persons were junior to them and were also promoted subsequently, they were given higher pay scale. It was, therefore, alleged that the principle of equal pay and equal work was not followed and therefore, the said act of respondent is clearly violative of Article 14 of the Constitution of India. Respondent No. 1 has filed an affidavit of one Vishwanath. In the said affidavit, it is stated that the petitioners were appointed to the post of Fireman Fitter prior to 1.4.1971. It is contended that the rules which were in force at the relevant time were amended from 1.4.1971 and accordingly Rule 32 was amended and Sub Rule 32(d) was

added to the existing Rule. It was, therefore, contended in the affidavit that since the petitioners were appointed prior to 1.4.1971, pay of the petitioners was fixed as per the provisions which existed prior to 1.4.1971. Further it is stated in the affidavit that though persons who were junior to the petitioners were promoted after 1.4.1971, they got the benefit of amended rules. In para 10 of the affidavit it is contended that petitioners have not suffered any monetary loss and that the petitioners belong to different group of employees and were governed by different rules which were prevalent at the time when promotions were given to them. Therefore, they were not entitled to the same pay scale.

5. Short question which falls for consideration before this Court is whether the Municipal Corporation is entitled to fix different pay scales in respect of employees falling in the same cadre and who were promoted at different point of time.

6. It is not possible to accept the submission made by the learned counsel appearing on behalf of the Corporation. It is a settled position in law that if employees from the same department are carrying out same

duties and functions, they are entitled to same pay and same pay scales on the principle of equal pay for equal work. It is not disputed by the Corporation that the nature of duties and responsibilities and the type of work which is being carried out by the petitioners is not in any way different than that of the persons who are given higher pay scales. It is also not disputed that the petitioners and the said employees do not fall in any other dis-similar category. The only justification which has been given by the Corporation is that the petitioners were appointed in the said post prior to 1.4.1971 and the persons who are given higher pay scale were appointed after the said date and pay scale was amended after 1.4.1971 as such subsequent promotees were entitled to get higher pay scale. In our view this distinction which is sought to be made on the basis of date of appointment, promotion of the petitioners and other employees can not be accepted as it is clearly violative of Article 14 of Constitution of India. It is not open for the Corporation to fix a cut off date in an arbitrary manner without assigning any justification or without stating the object which such cut off date seeks to achieve. In the present case the petitioners as well as the juniors who are getting higher pay scale, admittedly belong to the same category of employees. Under such

circumstances, there is no justification in carving out on the arbitrary cut off date, particularly when the nature of functions and duties is admittedly same. In view of this, therefore, the impugned order of the respondent is quashed and set aside. The rule is made absolute in terms of prayer clause (B).

7. The respondents are directed to give benefit of new pay scale alongwith new increments and benefits of revised pay scales on or before 31.12.2005. If, however, the said benefits are not given by the said date, the respondents shall pay the said amount with interest at the rate of 10% per annum. It is further clarified that in any event the aforesaid benefit should be given to the petitioners on or before 30th June 2006.

8. The petition is allowed in the aforesaid terms.

(R.M.S.KHANDEPARKAR,J)

(V.M.KANADE,J)